

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
AT&T Petition for Rulemaking)	RM-10593
To Reform Regulation of Incumbent)	
Local Exchange Carrier Rates for)	
Interstate Special Access Services)	

To: The Commission

**COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, hereby files these Comments in support of AT&T's petition looking to reform the regulation of Incumbent Local Exchange Carrier ("ILEC") rates for interstate special access services ("the AT&T Petition").¹ API strongly endorses the initiation of a rulemaking proceeding that would look toward modifying the current scheme of rate regulation applicable to interstate special access services of the ILECs subject to price cap regulation, including the basis for granting ILECs pricing flexibility for special access services.²

¹ Wireline Competition Bureau Seeks Comment on AT&T's Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, *Public Notice*, DA 02-2913, RM No. 10593 (rel. Oct. 29, 2002) ("AT&T Petition").

² *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 142111 (1999), ("Pricing Flexibility Order") *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3rd 449 (D.C. Cir. 2001).

API is a national trade association representing approximately 400 companies involved in all phases of the petroleum and natural gas industries, including the exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee is one of the standing committees of the organization's General Committee on Information and Technology. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting the telecommunications facilities and services used in the oil and gas industries.

COMMENTS

Interstate special access services are essential services for corporate data communications requirements. Despite the financial challenges that have overcome and continue to haunt countless telecommunications carriers, Internet services providers and Internet backbone providers, bandwidth requirements for business data communications continue to grow. As corporations have migrated to distributed networks and processing, the demand for bandwidth has increased at numerous corporate locations, not just at corporate data centers as was the case when main frame computing dominated the corporate environment. In order to operate efficiently, major corporations must seamlessly connect multiple, geographically-distributed local area networks to support corporate-wide business applications and to exchange and process increasing volumes of data.

DS-1 access service is the ubiquitous "last mile" facility utilized by large and small businesses to access the various data communications offerings of interexchange telecommunications carriers, such as frame relay and private line services, and the widely-used IP services offerings including virtual private networks (commonly referred to as "IP-VPNs"),

Internet access services and remote hosting services. At major corporate locations or operational centers, such as integrated voice and Internet-based call centers, higher capacity DS-3 and OC-N access facilities are required. Inbound voice services which may originate over wireline or wireless facilities invariably terminate over special access services. Similarly, access to and from the facilities, which may be managed either by service providers or internally by corporate customers, that support E-Commerce infrastructure rely on ILEC-provided special access services. The AT&T Petition highlights the dramatic growth in demand for the ILEC special access services using a variety of metrics.³ The ILECs own reports confirm the increasing demand for these services.⁴

Despite the growth in demand for interstate special access services, the emergence of robust, facilities-based competition in the provision of these services is not occurring as the Commission may have anticipated in the *Pricing Flexibility Order*. At the very least, the metrics for gauging the existence of meaningful competition should be reviewed. As AT&T points out, viable facilities-based alternatives are few and far between due to numerous factors and considerations, including substantial barriers to entry,⁵ and because many alternative suppliers are struggling to avoid bankruptcy or have sought protection under the Bankruptcy Code.⁶

³ AT&T Petition, Tab A, Declaration of Robert Friedlander (ILEC special revenues and rates of return).

⁴ Verizon Communications, Inc., SEC FORM 8-K REPORT, p. 12 (July 31, 2002) (reporting substantial growth in special access DSO service equivalents from 1st Quarter 2001 to 2nd Quarter 2002); and Verizon Communications, Inc., SEC FORM 10-Q REPORT, p. 18 (Aug. 12, 2002) (reporting substantial growth in special access services revenues for 2nd Quarter 2002 as compared to 2nd Quarter 2001).

⁵ AT&T Petition, Tab B, Declaration of Janiesz A. Ordoover and Robert Willig on behalf of AT&T Corp.

⁶ AT&T Petition, p. 27 and Tab D, Declaration of Kenneth Thomas, ¶10.

The AT&T Petition makes a compelling case for reviewing the regulatory scheme applicable to the special access service rates for ILECs subject to price cap regulation. A related point is that the adverse impact of bankruptcies among competitive, facilities-based special access providers may well be understated by AT&T. Over and above the financial and operational risks posed by many non-ILEC suppliers of special access services, interexchange carriers are further constrained from looking to non-ILECs because of another consideration: ILEC provisioning of special access services is both slow and unpredictable.⁷ Interexchange carriers and IP services providers cannot reasonably assure business customers that ILECs can provision access services in a timely, predictable manner. Rather than accept the risks and uncertainties of experiencing extended gaps in the provision of essential services, customers are constrained to seek assurances from interexchange carriers and IP services providers that only financially stable access providers (i.e., the ILECs) be utilized to provide the access services. Thus, interexchange carriers, IP services providers and users are confronted with the irony of ILEC provisioning inefficiencies and delays operating to reinforce the ILECs' dominant position in the special access services marketplace.

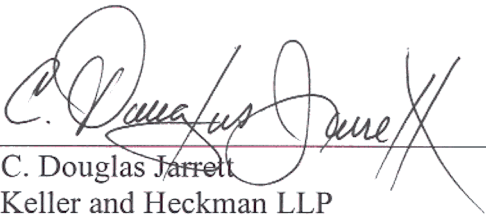
For these reasons and the multiple grounds set forth in the AT&T Petition, API respectfully requests that the Commission initiate a rulemaking proceeding to revise the rate regulation of ILEC special access services.⁸

⁷ *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, FCC 01-339 (released November 19, 2001) ("Special Access Metrics Proceeding").

⁸ Similarly, API urges the Commission to adopt rules in the Special Access Metric Proceeding consistent with the views of the Joint Competitive Industry Group. See Letter to Marlene H. Dortch, Secretary, CC Docket No. 01-321, Joint Competitive Industry Group (Sept. 26, 2002).

Respectfully submitted,

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CERTIFICATE OF SERVICE

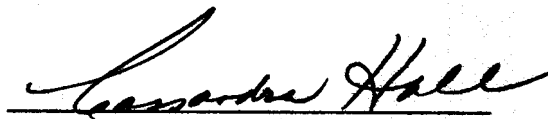
I, Cassandra Hall, do hereby certify that on this 2nd day of December 2002, I have caused a copy of the foregoing "Comments" in response to Public Notice, DA 02-2913, RM No. 10593, to be served upon the parties listed below.

Via U.S. Postal Service

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A handwritten signature in black ink, reading "Cassandra Hall", written over a horizontal line.

Cassandra Hall